

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TERRY L WHITLATCH**  
Claimant

**APPEAL NO. 12A-UI-08910-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 01-22-12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 10, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on August 20, 2012. The claimant did participate. The employer did participate through Angie Stevens, human resources generalist.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker, full-time, beginning July 20, 2011, through January 11, 2012, when he was discharged. That separation is not the subject of this case. The claimant was rehired on February 14, 2012 and worked full-time through June 5, 2012, when was again discharged. The claimant was discharged for a second violation of the employer's safety rules surrounding lock-out, tag-out procedures. In November 2011, the claimant was warned when he was misusing a water sprayer that had water with a temperature of 180 degrees. On January 11 2012, he was inside a machine that was not properly locked out. His last infraction was in June 2012, when the forklift he was driving knocked over a stack of pallets injuring an employee. The claimant's carelessness was responsible for the accident and the injury to a coworker.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had received several disciplinary actions for previous safety violation including suspension and termination. His own careless actions were responsible for the injury to his coworker. Claimant's repeated failure to safely perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

#### **DECISION:**

The July 10, 2012 (reference 03) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw